IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned On Brief February 23, 2001

BILLY D. MCKINNIE v. CORRECTIONS CORPORATION OF AMERICA, ET AL.

Direct Appeal from the Circuit Court for Hardeman County
No. 9266 Jon Kerry Blackwood, Judge

No. W2000-02006-COA-R3-CV - Filed June 26, 2001

Inmate brought action against defendants pursuant to 42 U.S.C. § 1983, alleging violations of his First Amendment right to access to the courts, his Fourth Amendment right to freedom from unreasonable searches and seizures, violations of Article I, sections 7 and 32 of the Constitution of Tennessee, as well as state law claims for intentional infliction of emotional distress, harassment, battery, and breach of contract. Defendants filed a Tennessee Rules of Civil Procedure Rule 12.02(6) motion to dismiss for failure to state a claim upon which relief can be granted. The trial court granted the motion to dismiss. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY K. LILLARD, J., joined.

Billy D. McKinnie, ***Pro se***.

Tom Anderson, Jackson, Tennessee, for the appellees, Corrections Corporation of America, Percy Pitzer, Charles Howard and Robert Adams.

OPINION

This is an appeal from the trial court's grant of the defendants' Tennessee Rules of Civil Procedure, Rule 12.02(6) motion to dismiss for failure to state a claim upon which relief can be granted. As such, we take the facts from the plaintiff's complaint and construe them in the light most favorable to the plaintiff.

Billie D. McKinnie (Mr. McKinnie) was, at all times pertinent hereto, an inmate incarcerated at Whiteville Correctional Facility in Whiteville, Tennessee. Whiteville Correctional Facility is

owned and operated by Corrections Corporation of America (CCA), a private corporation which contracts with the State of Wisconsin to house inmates.

On May 9, 2000, Mr. McKinnie filed a complaint pursuant to 42 U.S.C. § 1983 against CCA and a warden, assistant warden, and chief,[1] alleging violations of his First Amendment right to access to the courts and his Fourth Amendment right to freedom from unreasonable searches and seizures, violations of Article I, sections 7 and 32 of the Constitution of Tennessee, as well as citing claims for intentional infliction of emotional distress, harassment, battery, and breach of contract. Additionally, Mr. McKinnie requested class certification for the benefit of other prisoners similarly situated. In his complaint, Mr. McKinnie prayed for a temporary and permanent restraining order to enjoin CCA and its employees from confining Mr. McKinnie in segregation, for compensatory damages in the amount of $25,000, and for punitive damages in the amount of $50,000 from every named defendant.

Mr. McKinnie filed his complaint as a result of being transferred to the segregation ward in December of 1999 after an occurrence in the prison cafeteria in which Mr. McKinnie took no part, wherein inmates took staff members hostage. Upon being transferred to segregation, Mr. McKinnie was sprayed with mace in and about his face and eyes, which caused a severe reaction, and was "thrown to the ground, handcuffed and dragged to the segregation unit."

In February of 2000, Mr. McKinnie was ordered, without probable cause, to submit a urine sample for drug testing. Mr. McKinnie was subsequently returned to the general population. After a confrontation in the prison gym on the same day Mr. McKinnie was returned to the general population, Mr. McKinnie was again transferred to segregation. While in segregation, Mr. McKinnie shares a cell with another prisoner for twenty-three hours a day with one hour off for recreation. Mr. McKinnie states that some days he is locked in his cell for twenty-four hours a day, and claims that he suffers from substantial weight loss, migraine headaches, sleep deprivation, and pain and suffering as a result of being transferred to segregation. Mr. McKinnie further claims that his transfer to segregation is in retaliation for a previous lawsuit filed against CCA and its employees for the use of unnecessary and unreasonable force against him.

In response to Mr. McKinnie's complaint, the defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. The trial court granted the defendants' motion to dismiss, finding it to be well taken. Mr. McKinnie appeals, raising the following issue, as we perceive it, for this court's review:

> Whether the trial court erred in granting defendants' motion to dismiss for failure to state a claim upon which relief can be granted.

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[1] Mr. McKinnie named as defendants CCA, Mr. Pitzer, Mr. Howard, and Chief Adams in the style of his complaint; however, he also named Mr. Willie Clemmons as a defendant in the body of his complaint. Defendants Pitzer, Howard, and Adams were served with process on May 10, 2000. CCA was served with process on May 19, 2000. The record indicates that Mr. Clemmons was never served with process, and Mr. McKinnie does not dispute this fact. Thus, Mr. Clemmons is not a party to this action.

We review a motion to dismiss ***de novo*** upon the record. ***See Herron v. Harrison***, 203 F.3d 410, 414 (6th Cir. 2000). A Rule 12.02(6) motion to dismiss tests the legal sufficiency of the complaint. ***See Sanders v. Vinson***, 558 S.W.2d 838, 840 (Tenn. 1977); ***Dobbs v. Guenther***, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992). These motions are not favored; however, they will be granted when no set of facts are alleged in the complaint that state a claim for relief or when the complaint completely lacks clarity and specificity. ***See Smith v. Lincoln Brass Works, Inc.***, 712 S.W.2d 470, 471 (Tenn. 1986); ***Pemberton v. American Distilled Spirits Co.***, 664 S.W.2d 690, 691 (Tenn. 1984); ***Moore v. Bell***, 215 S.W.2d 787, 789 (Tenn. 1948); ***Dobbs***, 846 S.W.2d at 273. In order to determine whether a Rule 12.02(6) motion to dismiss should be granted, we must take all the material factual allegations as true and must construe the complaint liberally in the plaintiff's favor. ***See Lewis v. Allen***, 698 S.W.2d 58, 59 (Tenn. 1985). We, however, are not required to consider factual inferences or legal conclusions as true. ***See Elliott v. Dollar Gen. Corp.***, 475 S.W.2d 651, 653 (Tenn. 1971).

Retaliation

Mr. McKinnie alleges that the defendants violated his First Amendment right to access to the courts when the defendants "retaliated against him by placing him in segregation because of filing a law suit against CCA and its employees in the past." In an inmate's retaliation claim, instead of being denied access to the courts, the inmate is penalized for exercising that right. Mr. McKinnie claims that he is being penalized by being transferred to the segregation unit as a consequence of filing an action against CCA and its employees for using unnecessary and unreasonable force against him.

In order to state a claim for retaliation, Mr. McKinnie must establish that

> (1) [he] engaged in protected conduct; (2) an adverse action was taken against [him] that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two – that is, the adverse action was motivated at least in part by [Mr. McKinnie's] protected conduct.

Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999); ***see also Herron v. Harrison***, 203 F.3d 410, 415 (6th Cir. 2000).

In his complaint, Mr. McKinnie explains that a disturbance occurred in the prison's cafeteria which resulted in a lock-down of the prison. During the lock-down period, Mr. McKinnie was transferred to the segregation unit. Upon being released from segregation, Mr. McKinnie went to the prison's recreation area where he was informed that there was no outdoor recreation that day, only indoor recreation in the gym. Mr. McKinnie then went to the gym where he was confronted by three prison officials. Mr. McKinnie contends the prison officials said to him, "You just got out of

segregation and you're starting trouble already." After returning to his cell, Mr. McKinnie was again transferred to the segregation unit.

Based upon these facts, we find that Mr. McKinnie's transfer to segregation was a result of the aforementioned events and not in retaliation for his previously filed complaint against CCA and its employees. Therefore, we find that Mr. McKinnie failed to establish a claim for retaliation.

Unreasonable Search & Seizure

Mr. McKinnie alleges that the defendants violated his right to freedom from unreasonable search and seizure pursuant to the Fourth Amendment of the United States Constitution and to Article I, section 7 of the Constitution of Tennessee when they ordered Mr. McKinnie to provide a urine sample without probable cause. A urinalysis constitutes a search for purposes of the Fourth Amendment and therefore must be conducted in a reasonable manner. ***See Spence v. Farrier***, 807 F.2d 753, 755 (8th Cir. 1986). In determining whether a search of a prisoner is reasonable, courts must "[balance] the significant and legitimate security interests of the institution against the inmate['s] privacy interests," ***Bell v. Wolfish***, 441 U.S. 520, 522 (1979), and give prison administrators "wide-ranging deference in [their] adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." ***Id.*** at 547.

Prison officials have a significant and legitimate interest in preventing unauthorized drug use among prison inmates. Thus, the random urine collection and testing of prisoners is a reasonable means of combating the unauthorized use of narcotics and does not violate the Fourth Amendment. ***See Luthers v. Gunther***, 17 F.3d 1347, 1349-50 (10th Cir. 1994); ***Forbes v. Trigg***, 976 F.2d 308, 313 (7th Cir.1992), ***cert. denied***, 507 U.S. 950 (1993); ***see also Ramey v. Hawk***, 730 F. Supp. 1366, 1370 (E.D.N.C.1989); ***Storms v. Coughlin***, 600 F. Supp. 1214, 1221 (S.D.N.Y.1984). Accordingly, we find that Mr. McKinnie's urinalysis was proper and, thus, no violation of his Fourth Amendment rights occurred.

Article I, section 7 of the Constitution of Tennessee is identical in its intent and purpose with the Fourth Amendment, and Tennessee courts will not limit it more stringently than federal cases limit the Fourth Amendment. ***See Sneed v. State***, 423 S.W.2d 857 (Tenn. 1968). Furthermore, federal cases limiting the Fourth Amendment are particularly persuasive. ***See id.*** As the issue here was whether Mr. McKinnie's urinalysis was reasonable, and as the federal cases have found such urinalysis to be reasonable, we find that Mr. McKinnie did not state a claim for violation of article I, section 7 of the Constitution of Tennessee.

Tennessee Constitutional Violation

Mr. McKinnie alleges that the defendants violated article I, section 32 of the Constitution of Tennessee by subjecting him to "'psychological torture' for no ligitimate [sic] penalogical [sic] purpose." Article I, section 32 of the Constitution of Tennessee states: "**Prisons and prisoners. –**

That the erection of safe and comfortable prisons, the inspection of prisons, and the humane treatment of prisoners, shall be provided for." Tenn. Const. art. I, § 32. Mr. McKinnie does not specify how the defendants violated this provision of the constitution, rather he merely states he was subjected to "psychological torture." As relief cannot be granted on hypothetical damages, only specific damages, we thus find that Mr. McKinnie did not establish a claim for violation of article I, section 32 of the Constitution of Tennessee.

Battery

Mr. McKinnie next brings a claim for battery, alleging that prison officials, for no apparent reason, sprayed him with mace in his face and eyes, threw him to the ground, handcuffed him, and dragged him to the segregation unit. In order to have a claim for battery, Mr. McKinnie must show that there was a harmful or offensive contact with his person. Determining whether the contact was offensive requires using an objective standard: whether a reasonable person would find the contact offensive.

In his complaint, Mr. McKinnie explained that there had been a "major disturbance" in the prison cafeteria which resulted in a prison lock-down. During the lock-down, prison officials entered Mr. McKinnie's cell and informed him that he was being transported to the segregation unit. According to Mr. McKinnie, he was stunned at this announcement and began to ask "why and for what reason." After "several attempts to obtain an explaination [sic]" as to why he was being transferred, the prison officials sprayed him with mace, handcuffed him, and "dragged" him to the segregation unit. Mr. McKinnie did not allege that he suffered any physical harm as a result of the actions of the prison officials except that the mace caused a severe reaction. Additionally, he did not specify what the severe reaction involved. Accordingly, taking the facts as alleged in the light most favorable to the plaintiff, we find that Mr. McKinnie's claim for battery is without merit.

Intentional Infliction of Emotional Distress

Mr. McKinnie alleges that there is a "de facto[,] unwritten practice or policy known as the 'shock' treatment" wherein certain prisoners are targeted by prison officials for the "psychological game" of being placed in segregation "for no reason, except . . . to intentionally inflict emotion[al] distress and harm" as well as to harass. Mr. McKinnie alleges that there are 250 inmates placed in segregation "for no reason whatsoever."

While in segregation, Mr. McKinnie shares a cell with another inmate. He is confined for twenty-three hours a day, with one hour for recreation. On some days, Mr. McKinnie is confined for the entire day, as there is no recreation on some days. Additionally, Mr. McKinnie alleges that he is unable to participate in the vocational and educational programs available to inmates in the general population, that he is unable to practice his religion or have contact with family or loved ones, and that he is unable to smoke. He asserts that, as a result of his transfer to segregation, he suffered severe emotional distress which manifested in a physical injury in the form of substantial weight loss, migraine headaches, sleep deprivation, and pain and suffering.

In order to establish a claim for intentional infliction of emotional distress, the claimant must show that "(1) the conduct complained of [was] intentional or reckless; (2) the conduct [was] so outrageous that it is not tolerated by civilized society; and (3) the conduct complained of . . . result[ed] in serious mental injury." ***Bain v. Wells***, 936 S.W.2d 618, 622 (Tenn. 1997) (citing ***Medlin v. Allied Inv. Co.***, 398 S.W.2d 270, 274 (Tenn. 1966) ***abrogated on other grounds by Camper v. Minor***, 915 S.W.2d 437 (Tenn. 1996); ***Johnson v. Woman's Hosp.***, 527 S.W.2d 133, 144 (Tenn. Ct. App. 1975)). In order for conduct to be "outrageous," it must "go beyond all bounds of decency, and . . . be regarded as atrocious and utterly intolerable in a civilized community." ***Bain***, 936 S.W.2d at 623 (citations omitted). Based upon the foregoing and the facts as set forth in Mr. McKinnie's complaint, we find that the facts asserted in the complaint do not give rise to a cause of action for intentional infliction of emotional distress.[2]

Breach of Contract

Mr. McKinnie alleges a state law cause of action for breach of contract with the following language:

> [T]he Defendant CCA Breached its contract with the State of Wisconsin in which, Plaintiff is a benificiary [sic] as a third party, when they deprived him of the opportunity to attend and participate in any educational, vocational of [sic] Drug treatment programs under which the terms of the contract they are mandated to provide to all inmates transferred from the State of Wisconsin.

CCA is a private corporation which contracts with the State of Wisconsin to house inmates. Although Mr. McKinnie is one of the inmates transferred by Wisconsin to the CCA owned and operated Whiteville Correctional Facility, we do not find him to be a third party beneficiary to the State of Wisconsin - CCA contract. Thus, Mr. McKinnie does not have standing to bring this claim and it is therefore without merit.

Defendants

Mr. McKinnie sued defendants, Pitzer, Howard, and Adams in their official and personal capacities. In order to hold a jail official liable under the Civil Rights Act, it must be shown that such official's conduct subjected the plaintiff-inmate to deprivation of his constitutional rights, privileges, or immunities. ***See Inmates, Washington County Jail v. England***, 516 F. Supp. 132 (E.D. Tenn. 1980) ***aff'd***, 659 F.2d 1081 (1981). In the instant case, there was no showing that defendant officials were responsible for the alleged constitutional violations. We find that Mr. McKinnie's complaint fails to state a cause of action against any of these defendants in their official or their personal capacities.

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[2]It should be further noted that double celling, in this instance, is not a violation of Mr. McKinnie's constitutional rights, as it does not lead to the deprivation of Mr. McKinnie's essential needs, to increased violence among the inmates, nor does it create intolerable conditions. ***See*** 72 C.J.S. ***Prisons*** § 73 (1987).

Conclusion

For the foregoing reasons, we affirm the trial court's granting the defendants' Rule 12.02(6) motion to dismiss. Costs of this appeal are taxed to the appellant, Billy D. McKinnie, for which execution may issue if necessary.

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DAVID R. FARMER, JUDGE